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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,668	08/16/2001	Andrew Michael Pelletier	GEMS:0055--1/YOD 31-PN-62	3806
7590 Patrick S. Yoder Fletcher, Yoder & Van Someren P.O. Box 692289 Houston, TX 77269-2289			EXAMINER BOCKELMAN, MARK	
			ART UNIT	PAPER NUMBER
			3766	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/931,668

Applicant(s)

PELLETIER ET AL.

Examiner

Mark W. Bockelman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-19, 21-32 and 34-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-19, 21-32 and 34-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Applicant uses means plus function language in for each of the limitations in claim 28 which are not readily apparent to the examiner as to which disclosed structure in the figures the recited means corresponds. The examiner requires applicant to amend the specification to explicitly state what structure performs the recited function for each means plus function element recited in claim 28. See MPEP § 2181 IV. Applicant also claims that updated entire presentations as well as updated interface pages are transmitted only in real time mode. The examiner has perused the specification and finds no explicit supporting language. To the contrary, the disclosure states that only updated parameter data is transmitted during realtime mode and applets etc. that are on the remote computer configures such presentations and pages from the data. Thus, the examiner also requires applicant to demonstrate where the all the steps and language in the method claims are supported in the specification since the examiner finds no corresponding description.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16-19, 21-32 and 34-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 18, 27 and 31, for reasons presented in the last office action there is no retransmission of an entire page or presentation. New data is transmitted as it becomes available. While applicant has eliminated such "retransmission" language from each of the independent claims, dependent claims 18, 27 and 31 still have such language. Regarding claims 16, 23 and 28. Each of the claims have some thing different. Some claims indicated that only updated data is sent while other claims indicate that only interface pages are sent. Interface pages appear to cover both data and graphics. One would seem to exclude the other. How does applicant have support for both?

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-19, 21-32 and 34-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 28, applicant has “means for only the updated to the general purpose display”. The examiner has no idea what this means or what structure this is supposed to correspond with.

Applicant uses means plus function language in claims 28-32, 34-35, 42-44 which have no identified corresponding structure in the specification and thus rendering the elements indefinite in meaning. The language is contrary to that which is described in the specification and thus renders it confusing and indefinite. There is no transmission of the presentation transmission of an updated version of the presentation or interface page in real time mode in the specification. Moreover, applicant's claims independent claims seem to conflict, one set stating that only updated data is transmitted and other sets saying presentations or interface pages are transmitted. The specification seems to support only newly available data.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28 -32, 34, 42-43 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Frid et al. USPN 5,857,967 (alone or alternatively in view of Gat USPN 5,954,663 and/or Egler U.S. Patent No. 5,458,116 and/or Hawes USPN 6,061,715).

Frid et al. teach the use of a general purpose network see figure 1 that uses a communication network 30, a browser 40, a healthcare device 10 and a web server 14. In column 4 lines 26, it is disclosed that the health care device may be an electrocardiogram recorder. Since such devices can be used to measure fetal ecgs the examiner considers the ECG monitor 10 to be a means for detecting a fetal parameter of interest and for generating a fetal condition signal. It is stated that the device makes ecg recordings that may be accessed by the web server. The examiner thus considers the recorder to be means for storing the fetal condition signal. The examiner considers the display element, the browser and its associated software for displaying the ecg data to be means for defining a general purpose network presentation. The means for transmitting the presentation is the same as applicant's means which includes a server,a general communication network 30 and associated software such as http links,

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URLs, html files etc. permit the html files to be transmitted. Frid et al teaches in general that files including the requested data stored as html files are transmitted to the computer and display station (see column 5-13). As known in the art, such files need only be transmitted once since the data stored therein needs no updating. Frid discusses accessing recorded ecgs in column 4 lines 29-33. Frid never states that the files are retransmitted in this mode and thus the examiner considers this to be a mode in which no retransmission takes place. Frid teaches the medical device may also provide real-time ecg data to an external web browser using HTTP and HTML protocols. Real time transmission entails the transmission of new data as it becomes available by definition. Since this is the same procedure as that discussed in applicant's specification, the examiner considers this to be a means for "updating the presentation" and means for "transmitting the presentation" to the general purpose display station only when the presentation is in real time mode. To the extent applicant's specification supports this kind of language the Frid device is applicable to the claim language as well. While the ecg recorder of Frid is not disclosed as an fetal sensor, it is considered the same or an equivalent thereof. If not, the examiner alternatively applies Gat which discloses a CTG sensor for fetal heart traces. To have used the Frid system to monitor fetal heart conditions would have been obvious. In addition, since Frid teaches that the server can transmit recorded data and also real time data using HTTP protocol, the examiner considers this a teaching for providing both functions and one would expect each can be selected by web page links. If not it would have been obvious since it was well known to provide

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physicians with the ability to select between various time periods (historical data) and real time viewing as evidenced by Egler (see switch 330 and column 4 lines 42-48). While the examiner considers the real time transmission to inherently involve updating of the of a website and its transmission Hawes 6,061,715 is cited as showing that this is an inherent function of a conventional browser. Hawes also teaches that some of the information may be cached and only updated information from the website transmitted. This is the same process disclosed by applicant. The examiner considers it inherent to the Frid system, and if not obvious. Live web updates have been around since at least the mid 1990's.

Claims 16-19, 21-27, 35-41, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frid et al USPN 5,857,967 in view of Gat U.S. Patent No. 5,954,663 or vice versa (and optionally Egler U.S. Patent No. 5,458,116 and/or Hawes USPN 6,061,715).

With respect to claims 35 and 44, applicant recites a graphical display and various alternative data such as a patient name. Gat shows graphical displays of heart data as well as the inclusion of the name in the data. To have presented the Frid display in graphical form along with a patient ID would have been obvious since such is conventional for viewing ecgs and fetal data and identifying patient to which the trace belongs is common sense.

As noted above Frid et al uses the same system as applicant for recording and accessing ecg's and applicant's method step closely follow each means

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clause. Applicant differs in his methods by recording fetal sensor data for transmission and viewing. Implementing the Gat sensors into the Frid et al system, or alternatively, applying the Frid internet system to the Gat device for the specific advantages taught over Gat type systems would have been obvious. Transmission or "Retransmission" (applicant's claims is performed in the same sense as applicant disclosed in his originally filed application, that is the newly arriving data to the server would be transmitted in real time to the browser as provided by Frid. Such real time implementations on the internet have been well known prior to applicant's effective filing data. As noted above, Frid is considered to provide both HTTP protocol for historical file transmission as well as real time transmission, however, the examiner additionally cites Egler to demonstrate that providing the option to a viewer to select between historical data and real time data at the display device was a well known inclusion in the types of heart monitoring systems taught by Frid et al.

Response to Arguments

Applicant's arguments filed 10-23-2006 have been fully considered but they are not persuasive. In regard to applicant's response to the examiner's objection to the specification, applicant fails to amend the specification to particularly identify the corresponding structure for each of the means clauses is incomplete. For instance, for the last clause "means for updating data only in real time" applicant lists pages 11 lines 27-30 and page 15, lines 19-22 which have nothing to do with the stated means. Moreover the examiner has asked applicant to identify the structure, not just the passages since applicant has argued

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different structures from the applied art are used. If applicant has no particular structure the should state so on the record. The examiner still contends that applicant's functions and structures are all inherent to internet browser operations included in the Frid disclosure at the time of applicant's invention and there is no discernible difference between what is taught in applicant's specification and the Frid disclosure. The examiner has added Hawes as a demonstration of the typical transmission of updated web pages based on requests from the browser as well as the controllability over the browser to retrieve such updates in terms of its frequency. Applicant's arguments are not deemed persuasive.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W. Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Friday 10:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272 -6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWB

January 19, 2007


MARK BOCKELMAN
EXAMINER